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Filed

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E-FILED

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

5 UNITED STATES DISTRICT COURT
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7 FOR THE
8
9 NORTHERN DISTRICT OF CALIFORNIA

9 AURELIO MACIEL MATA,

10 Plaintiff,

11 vs.

12 EDWARD J. ULRICK dba ULRICO

13 SERVICES, BOB MONSEN dba

14 CONSTRUCTION SERVICES, and DAFOE

15 ~~COMPANY and DOES 1-10~~

16 Defendants

) Case No:

C07 03915

) COMPLAINT FOR DAMAGES AND
) DEMAND FOR JURY TRIAL:

-) 1) Violation of California Labor Code
) Section 510;
) 2) Violations of the Federal Fair Labor
) Standards Act;
) 3) Violation of California Business and
) Professions Code Section 17200; and
) 4) Violation of California Labor Code
) Section 201;
) 5) Violation of California Labor Code
) Section 226.

HRL

17 NATURE OF CLAIM

- 18 1. This is an action on behalf of AURELIO MACIEL MATA who had been employed on a
19 hourly basis by ULRICO SERVICES, CONSTRUCTION SERVICES, AND DAFOE
20 COMPANY during the last four years prior to the filing of this Complaint, seeking
21 damages arising from employer's failure to pay overtime as required by the Fair Labor
22 Standards Act and the California Wage Orders and statutes. Plaintiff seeks compensatory
23 damages for unpaid wages under California Labor Code and Wage Orders, liquidated
24 damages under 29 U.S.C. §216(b), waiting time penalties under California Labor Code §
25 203, damages for inadequate pay statements under California Labor Code Section 226,

1 and attorney's fees, costs, pre judgment interest pursuant to California Labor Code §
2 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices
3 Act under California Business and Professions Code § 17203.

4 **SUBJECT MATTER JURISDICTION AND VENUE**

- 5 2. This Court is a proper venue, as all events giving rise to this lawsuit have occurred in this
6 district.
- 7 3. Subject matter jurisdiction of this action of this Court is based upon Fair Labor Standards
8 Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

9 **PARTIES**

- 10 4. At all times relevant herein, Plaintiff AURELIO MACIEL MATA is an individual
11 resident of Santa Clara County, California.
- 12 5. At all times relevant herein, Defendants ULRICO SERVICES, CONSTRUCTION
13 SERVICES, AND DAFOE COMPANY are construction service business of unknown
14 organizational type in the State of California.
- 15 ~~6. All times relevant herein, individual Defendant EDWARD J. ULRICH is an individual~~
16 ~~doing business as ULRICO SERVICES, in Pescadero, California.~~
- 17 7. All times relevant herein, individual Defendant BOB MONSEN is an individual doing
18 business as CONSTRUCTION SERVICES, in Pescadero, California.
- 19 8. Individual Defendants EDWARD J. ULRICK, BOB MONSEN and DOES 1-10, at all
20 times relevant herein, are, according to information and belief, officers, owners, or
21 employees of ULRICO SERVICES, CONSTRUCTION SERVICES, AND DAFOE
22 COMPANY, having control over the Plaintiff's work condition and work situation.

23 **GENERAL ALLEGATIONS**

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- 1 9. At all times relevant herein, Plaintiff was an employee of defendants ULRICO
2 SERVICES, CONSTRUCTION SERVICES, AND DAFOE COMPANY, construction
3 service companies doing business in Santa Clara County, California.
- 4 10. Plaintiff was according to information and belief, an employee of Defendants acting in
5 the normal course and scope of employment duties with Defendants.
- 6 11. During the course of Plaintiff's employment with ULRICO SERVICES,
7 CONSTRUCTION SERVICES, AND DAFOE COMPANY, Plaintiff regularly worked
8 in excess of 8 hours per day and more than 40 hours per week.
- 9 12. Plaintiff was paid on an hourly basis.
- 10 13. Plaintiff did not perform "exempt" duties in his position as a plasterer with ULRICO
11 SERVICES, CONSTRUCTION SERVICES, AND DAFOE COMPANY and thus was
12 not subject to any exemption under the Fair Labor Standards Act, *29 CFR 541.112*,
13 *541.209 and 541.209*. The Plaintiff was not even marginally responsible for management
14 or administrative functions, and his primary job did not require him to exercise
15 ~~independent discretion and judgment or regularly require invention or imagination in a~~
16 recognized field of artistic endeavor more than fifty percent of his working time.
- 17 14. At no time during the Plaintiff's employment did Plaintiff maintain any professional
18 license with the state or practice any recognized profession, nor did Plaintiff exclusively
19 manage any division of ULRICO SERVICES, CONSTRUCTION SERVICES, AND
20 DAFOE COMPANY where he customarily and regularly exercised discretionary powers
21 or perform services of management. Plaintiff did not directly supervise any employees
22 nor did he participate in the development of general administrative policies of ULRICO
23 SERVICES, CONSTRUCTION SERVICES, AND DAFOE COMPANY
- 24 15. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as
25 DOES 1 through 10, inclusive, and therefore, they sue these defendants by such fictitious

1 names. Plaintiffs will amend this complaint to allege their true names and capacities
2 when ascertained. Plaintiffs are informed and believe and thereon allege that each of the
3 fictitiously named defendants' are negligently responsible in some manner for the
4 occurrences here in alleged. Plaintiffs are informed and believe and thereon allege that
5 each of the fictitiously named defendants had control over plaintiff's work condition and
6 work situation, and the violations of law as herein alleged were approximately caused by
7 defendants' actions.

8 16. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned
9 each of the defendants, including all defendants sued under fictitious names were the
10 agent and employee of each of the remaining defendants, and in doing the things herein
11 after alleged, was acting within the course and scope of this agency and employment.

12 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

13 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

14 17. Plaintiff re-alleges and incorporates paragraphs 1-16 as if fully stated herein.

15 ~~18. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's~~
16 employment by Defendants, provides that all employees are entitled to payment at the
17 rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and
18 double time for hours in excess of 12 in one day.

19 19. During the course of employment with Defendants, Plaintiff regularly worked in excess
20 of 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly
21 failed to pay Plaintiff overtime wages as required by law.

22 20. California Labor Code Section 1194 provides that it is unlawful for employers not to
23 make the required overtime payments identified in the preceding paragraph and that
24 employees not paid such payments can recover any monies owed by civil action.

25 21. Defendants therefore owe Plaintiff overtime wages in an amount subject to proof.

1 22. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the
2 amount owed.

3 23. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor
4 Code Sections 510 and 1194 and is therefore unlawful.

5 24. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff
6 reasonable attorney's fees and costs incurred by him in this action.

7 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

8 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

9 25. Plaintiff re-alleges and incorporates paragraphs 1-23 as if fully stated herein.

10 26. At all relevant times herein, Plaintiff's employment was subject to the provisions of the
11 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and
12 Plaintiff was an individual employee covered by virtue of Plaintiff's direct engagement in
13 interstate commerce.

14 27. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work
15 ~~performed in excess of forty hours per week, unless specifically exempted by the law.~~

16 28. Although Plaintiff was not so exempt during employment with ULRICO SERVICES,
17 CONSTRUCTION SERVICES, AND DAFOE COMPANY, defendants knowingly
18 caused and permitted Plaintiff to regularly work in excess of forty hours per week
19 without paying Plaintiff one and one half of Plaintiff's regular rate of pay.

20 29. By not paying overtime wages in compliance with the FLSA, defendants violated
21 Plaintiff's rights under the FLSA.

22 30. As a direct and proximate result of defendants' failure to pay proper wages under the
23 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.

24 31. Defendants intentionally, with reckless disregard for their responsibilities under the
25 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus defendants

1 are liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,
2 pursuant to 29 U.S.C. § 216(b) of the FLSA.

3 32. Defendants therefore owe Plaintiff overtime wages in an amount subject to proof.

4 33. Plaintiff was required to retain legal assistance in order to bring this action and, as such,
5 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the
6 FLSA.

7 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201**

8 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

9 34. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-32 as if fully stated
10 herein.

11 35. At the time Plaintiff's employment with ULRICO SERVICES, CONSTRUCTION
12 SERVICES, AND DAFOE COMPANY was terminated, defendant's owed Plaintiff
13 certain unpaid overtime wages in amounts previously alleged.

14 36. Failure to pay wages owed at an employee's termination as required by Labor Code §201
15 ~~subjects the employer the payment of a penalty equaling up to 30 days wages, as~~
16 provided for in Labor Code § 203.

17 37. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
18 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to thirty
19 (30) days wages, an amount totaling approximately \$3,360.00.

20 38. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff
21 reasonable attorney's fees and costs incurred in this action.

22 39. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on
23 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),
24 accruing from the date the wages were due and payable.
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**COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE
SECTION 17200 UNFAIR BUSINESS PRACTICES**

40. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-38 as if fully stated herein.

41. At all times relevant herein, Plaintiff's employment with ULRICO SERVICES, CONSTRUCTION SERVICES, AND DAFOE COMPANY was subject to the California Labor Code and applicable Wage Orders promulgated by the California Industrial Welfare Commission, which required all employees to be paid overtime for work performed in excess of forty hours per week or eight hours per day, unless specifically exempted by law.

42. At all times relevant herein, as the employer of Plaintiff, defendants were subject to the California Unfair Trade Practices Act (California Business and Professions Code § 17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable California Labor Code and applicable Wage Orders.

~~43. During the period Plaintiff was employed with ULRICO SERVICES, CONSTRUCTION~~
SERVICES, AND DAFOE COMPANY, defendants failed to pay Plaintiff legally required overtime pay to which he was legally entitled, with defendants keeping to themselves the amount which should have been paid to Plaintiff.

44. In doing so, defendants violated California Unfair Trade Practices Act, Business and Professions Code §17200, et seq. by committing acts prohibited by applicable California Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a competitive advantage over other employers and businesses with whom defendants were in competition and who were in compliance with the law.

1 45. As a direct and proximate result of defendants' violations and failure to pay the required
2 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred
3 general damages in the form of unpaid wages in an amount subject to proof.

4 46. Defendants had been aware of the existence and requirements of the Unfair Trade
5 Practices Act and the requirements of State and Federal wage and hour laws, but
6 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.

7 47. Plaintiff, having been illegally deprived of the overtime pay to which he was legally
8 entitled, herein seeks restitution of such wages pursuant to the Business and Professions
9 Code §17203 in an amount subject to proof

10 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

11 **INADEQUATE PAY STATEMENTS**

12 48. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-46 as if fully stated
13 herein.

14 49. California Labor Code Section 226 provides that all employers shall provide to
15 ~~employees accurate and complete wage statements including, but not to limited to, an~~
16 accurate and current statement of all rates paid for all regular and overtime hours worked
17 during the pay-period, a complete and itemized statement of deductions, net wages
18 earned, the dates fir which payment is being made, any and all applicable piece rates, and
19 the current address ad name of the employer.

20 50. California Labor Code Section 226 further provides that any employee suffering injury
21 due to a willful violation of the aforementioned obligations may collect the greater of
22 either actual damages or \$50 for the first inadequate pay statement and \$100 for each
23 inadequate statement thereafter.

24 51. During the course of Plaintiff's employment, defendants consistently failed to provide
25 plaintiff with adequate pay statements as required by California Labor Code §226.

1 52. Defendants failed to provide such adequate statements willingly and with full knowledge
2 of their obligations under Section 226.

3 53. Defendants' failure to provide such adequate statements has caused injury to the plaintiff.

4 54. Defendants therefore owe Plaintiff actual damages in an amount subject to proof.

5 55. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such
6 costs under California Labor Code §226.

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8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for the following relief:

10 56. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an
11 amount subject to proof.

12 57. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount
13 subject to proof.

14 58. For restitution of unpaid overtime pay pursuant to California Business and Professions
15 Code §17203 in an amount subject to proof.

16 59. For actual damages for inadequate pay statements pursuant to California Labor Code
17 Section 226 in an amount subject to proof.

18 60. For waiting time penalty damages of thirty days wages to Plaintiff, pursuant to California
19 Labor Code § 203 in the amount of approximately \$3,360.00;


20 61. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
21 salaries pursuant to California Labor Code §1194(a);

22 62. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor
23 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

24 63. For costs of suit herein; and

25 64. For such other and further relief as the Court may deem appropriate.

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6 July 24, 2007
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